ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

July 11, 2007

Via e-mail:

rule-comments@sec.gov
Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

FILE NO. PCAOB-2007-02; SEC RELEASE NOS. 34-55876 AND 34-55912; PROPOSED AUDITING STANDARD NO. 5 -- AN AUDIT OF INTERNAL CONTROL OVER FINANCIAL REPORTING THAT IS INTEGRATED WITH AN AUDIT OF FINANCIAL STATEMENTS

Ladies and Gentlemen:

This letter is submitted on behalf of the Organization for International Investment ("*OFII*") and comments on a new auditing standard proposed to be adopted by the Public Company Accounting Oversight Board (the "*PCAOB*") entitled "Auditing Standard No. 5 - An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements" (the "*Proposed Standard*"). The Securities and Exchange Commission (the "*SEC*") has requested comments regarding the Proposed Standard in a notice set forth in Release No. 34-55876, dated June 7, 2007 (the "*Notice*"), and a notice of additional solicitation of comments set forth in Release No. 34-55912, dated June 15, 2007 (the "*Second Notice*"). The Second Notice requests specific comment on seven questions.

Our primary comments on the Proposed Standard, which are described in greater detail below, are as follows:

- more guidance should be included on the importance of risk assessment;
- the materiality standard should be modified to be made consistent with that used for MD&A disclosures;
- more guidance should be provided on the auditor's ability to use the work of others; and

- auditors should have greater discretion to rely on entity-level controls.

In our view, the excessive costs of compliance with the SEC's internal control reporting rules represent one of the chief impediments to foreign companies choosing to list their securities in the United States. While we appreciate the improvements reflected in the Proposed Standard, it is imperative that these requirements be rationalized so that the benefits are commensurate with the costs. We urge the SEC and the PCAOB to give full consideration to all comments received so that the right balance between cost and benefit is struck.

About OFII

OFII is an association representing the interests of over 150 U.S. subsidiaries of companies based abroad. Most of our members' parent companies are foreign private issuers under SEC rules. These parent companies file annual reports on Form 20-F, as well as other reports with, and make submissions to, the SEC. A list of the members of OFII is attached as Annex A to this letter. OFII has previously commented on a number of matters before the SEC of particular concern to foreign private issuers, including, among other things, extensions of the compliance deadlines for reports under Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's de-registration rules.[1]

Foreign companies make a significant contribution to the U.S. economy through their subsidiaries in the United States. For example, in 2005, companies headquartered abroad "insourced" 5.1 million jobs, spent $29.9 billion on U.S. research and development, and exported $153.9 billion in goods from the U.S., and in 2004 paid $29.9 billion in federal taxes.

The foreign private issuer parent companies of our members have chosen to invest and operate in the United States and/or to have their securities listed or traded in the United States. In most cases, the primary market for a foreign company's equity securities is its home jurisdiction, and such companies seek secondary listings in other markets, including the United States, to mitigate risk and gain access to other sources of capital. Such companies have a wide array of choices in capital markets and, therefore, regulatory burdens and compliance costs weigh heavily in determining where such companies pursue listings. As a result, OFII members are deeply concerned about, and have a vested interest in, the continuing competitiveness of the U.S. capital markets. OFII member companies are keenly focused on the need to strike an appropriate balance between a strong corporate governance and disclosure regime, on the one hand, and curbs

[1] *See* our letter to Chairman Cox dated November 9, 2005, our letter to Chairman Donaldson dated February 22, 2005, and our comment letter on various rule proposals dated November 27, 2002.

on excessive regulatory burdens and compliance costs, on the other hand, so that U.S. capital markets remain attractive and competitive.

We have organized this letter in three parts. First, we express our appreciation for a number of accommodations that the SEC has made for foreign private issuers, and we indicate our support for a number of ongoing SEC initiatives that should enhance the attractiveness of the U.S capital markets for foreign private issuers. Second, we outline a number of comments on the Proposed Standard. Finally, we offer some observations on other topics of interest to foreign private issuers.

OFII Commends the SEC for Prior Accommodations for Foreign Private Issuers and Supports Further Initiatives

OFII and its member companies greatly appreciate the steps the SEC has already taken to recognize the unique situation of foreign private issuers and to enhance the competitiveness of the U.S capital markets as compared with other world financial and capital markets. Specifically, OFII commends the SEC for taking the following actions:

- amending rules under the Securities Exchange Act of 1934 to give foreign private issuers more flexibility to exit the SEC's registration and reporting regime, thereby removing what some had perceived as a detriment to listing in the United States;

- extending the deadline for compliance with the reporting and auditing requirements under Section 404 of the Sarbanes-Oxley Act of 2002, including most recently (i) extending the deadline for the audit of internal control over financial reporting ("*ICFR*") for all smaller public companies (including foreign private issuers) to fiscal years ending on or after December 15, 2008, and (ii) extending the deadline for the audit of ICFR for foreign private issuers that are accelerated filers (but not large accelerated filers) to fiscal years ending on or after July 15, 2007;

- adopting accommodations for foreign private issuers with respect to the SEC's audit committee requirements, including (i) specified exemptions from the audit committee independence requirement, and (ii) expanding the definition of "audit committee financial expert" to include a person with an understanding of the issuer's home country GAAP instead of U.S. GAAP;

- enacting certain limited exceptions for foreign private issuers under Regulation G regarding the use of non-GAAP financial measures; and

- facilitating faster and easier access to the U.S capital markets, especially for foreign private issuers who are "well-known seasoned issuers," through reforms to the offering rules under the Securities Act of 1933.

While these accommodations are very much appreciated and have helped improve the competitiveness of the U.S capital markets in the eyes of foreign private issuers, these measures are just a start.[2] OFII believes much more can be done to decrease the costs and burdens imposed on foreign private issuers, without sacrificing investor protection, so that the attractiveness of U.S. capital markets is enhanced and foreign private issuers have a more balanced choice when comparing the U.S. capital markets with other markets.

In this regard, OFII strongly supports the SEC's recent proposal to eliminate the requirement that foreign private issuers reconcile their financial statements to U.S. GAAP, provided that such foreign private issuers prepare financial statements in accordance with International Financial Reporting Standards ("*IFRS*").[3] The requirement to reconcile financial statements to U.S. GAAP imposes significant costs on foreign private issuers and makes listing in the U.S. less attractive. OFII and its members strongly encourage the SEC to move quickly to eliminate the U.S. GAAP reconciliation requirement and thereby reduce the costs of listing securities in the United States. Foreign companies have a wide array of choices in capital markets and, therefore, regulatory burdens and compliance costs weigh heavily in determining where such companies pursue listings. Further, OFII urges the SEC to not only act promptly on this issue, but to consider and act upon the proposal separately and independent of any action with respect to convergence or mutual recognition of accounting standards.

Further, recognizing the recent movement toward harmonization of accounting standards, OFII stands ready and willing to work with the SEC, as well as with the OFII member companies and investors generally, to facilitate educational initiatives which will bring about a better understanding among investors in different jurisdictions with respect to different accounting standards. With such an understanding, investors will be better able to compare financial statements and results across borders. In addition, OFII supports the SEC's initiatives with respect to harmonizing accounting standards, including the SEC's "roadmap" for convergence of U.S. GAAP and IFRS, and the SEC's promotion of continued close cooperation between the Financial Accounting Standards Board and the International Accounting Standards Board to push towards this convergence of accounting standards.

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[2] Indeed, OFII believes certain of the above-listed accommodations could themselves be expanded to further improve the competitiveness of the U.S. capital markets. For example, OFII believes the exception for foreign private issuers from the rules governing use of non-GAAP financial measures could be expanded to reflect performance measures and other metrics used by management in the issuer's domestic markets, without weakening protection for investors.

[3] *See* Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Rel. No. 33-8818 (Jul. 2, 2007).

OFII's Comments on the Proposed Standard

Overall, we believe the Proposed Standard represents a significant improvement over the prior auditing standard, and we believe auditors will be able to rely on the Proposed Standard to more cost-effectively and efficiently conduct the required audit of ICFR. However, we believe several improvements could still be made to the Proposed Standard, as described in greater detail below.

A. Expand High-Level Guidance on Importance of Risk Assessment

The Proposed Standard includes an introductory section discussing the role of risk assessment in planning the audit of ICFR.[4] While this section is helpful as far as it goes, OFII remains concerned that the open-ended language in this section is not as explicit as it could be in explaining the direct relationship between the level of risk and the number of controls, particularly at the lower, transaction level, that should be tested. In some cases, OFII member companies have reported that their auditors feel it necessary to test many thousands of individual controls at the transaction level. While testing of controls is only one element of the overall audit of ICFR, the quantity of controls tested in audits conducted under Auditing Standard No. 2, particularly at the transaction level, has created a widespread perception that auditors are doing more work than is reasonably necessary to assess the effectiveness of ICFR. We are concerned that unless the Proposed Standard explicitly draws the auditors' attention to the link between the level of risk and the number of controls to be tested, auditors will continue to test more transaction-level controls than is reasonably necessary, out of an abundance of caution or fear of liability. OFII therefore recommends that the Proposed Standard be expanded to state explicitly that the number of controls to be tested, particularly at the transaction level, should be reduced for areas where there is comparatively less risk of a material weakness.

Separately, we strongly urge the SEC (perhaps the Office of Chief Accountant) to actively monitor the actual benefits realized in the coming year as a result of auditors following the new guidance in the Proposed Standard, as compared with Auditing Standard No. 2. Specifically, we urge the SEC to track the percentage and absolute reduction in number of controls tested under the new standard, to assess whether the promised benefits of the new standard are realized in fact. OFII's member companies will be monitoring their own experiences with their auditors under the new standard and will be keenly focused on whether the new standard results in a meaningful reduction in the number of controls tested and the attendant costs involved.

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[4] Proposing Release at Paras. 10-12.

B. Modify the Materiality Standard

The Second Notice asks whether the Proposed Standard appropriately defines the standard of materiality to provide sufficient guidance to auditors. The Proposed Standard requires the auditor, when planning the audit of internal control over financial reporting, to use the same materiality considerations he or she would use in planning the audit of the company's annual financial statements.[5] The Proposed Standard refers the auditor to AU sec. 312, *Audit Risk and Materiality in Conducting an Audit* ("*AU sec. 312*") for further discussion of the materiality standard. AU sec. 312 instructs auditors to consider the nature and amount of any misstatements in relation to the nature and amount of items in the financial statements under audit. Under this guidance, a misstatement or omission is material if it has a level of magnitude that, in light of the surrounding circumstances, makes it **probable** [*emphasis added*] that a reasonable person's judgment relying on the information would have been changed or influenced by the misstatement or omission.[6]

By way of comparison with AU sec. 312, the Proposed Standard defines "material weakness" as "a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a **reasonable possibility** [*emphasis added*] that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis." According to the Proposed Standard, there is a reasonable possibility of an event when the likelihood of the event is either "reasonably possible" or "probable" as those terms are used in Financial Accounting Standards Board Statement No. 5, *Accounting for Contingencies* ("*FAS 5*"). While the new definition of "material weakness" is an improvement over existing PCAOB auditing literature, which describes a material weakness as a control deficiency, or combination of control deficiencies, that result in **more than a remote likelihood** [*emphasis added*] that a material misstatement of the company's annual or interim financial statements will not be prevented or detected, we do not believe that the "reasonable possibility" standard from FAS 5 is the appropriate standard to use for materiality in an audit of ICFR nor to determine whether a material weakness exists, nor in the consequent disclosures surrounding a determination of material weakness.

OFII believes that a misalignment of materiality standards for different purposes has contributed to inefficiencies and uncertainties surrounding ICFR (as well as other potential disclosable events). OFII believes a more appropriate materiality standard for an audit of ICFR, including for the determination of whether a material weakness exists, is the standard articulated by the SEC for disclosing required information in the Management's Discussion and Analysis of Financial Condition and Results of Operations ("*MD&A*") section of the annual report on Form

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[5] Proposed Standard at Para. 20.

[6] AU sec. 312 at paras. .09, .10.

10-K (Item 5 of Form 20-F).[7] Item 303 of Regulation S-K, which specifies the requirements for MD&A, requires, among other things, disclosure of known demands, commitments, events, trends or uncertainties that the registrant reasonably expects to have a material impact on results of operations or liquidity. The SEC's interpretive guidance addressing Item 303's requirements articulates a standard of materiality and disclosure that has been utilized for nearly 20 years and which is more in conformity with the legal principles espoused by the U.S. Supreme Court in *Basic v. Levinson.*[8] The interpretive guidance sets forth a two-pronged test for evaluating materiality for purposes of disclosing information in MD&A as follows:

> (i) management should first assess probability and determine, objectively, whether the known uncertainty is "reasonably likely to come to fruition"; if management answers this in the negative, there is no duty to disclose, regardless of the magnitude of the known uncertainty (although it may be prudent to disclose events of enormous magnitude even if not material); and
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> (ii) if management cannot determine that the uncertainty is not reasonably likely to come to fruition, it must assume that the known uncertainty will occur, and then must assess the magnitude by considering "whether a reasonable investor would consider the fact important to his or her investment decision."

The materiality standard endorsed by the SEC for purposes of MD&A represents a more risk-based approach to assessing materiality than the standard articulated in FAS 5 and is consistent with AU sec. 312. OFII therefore believes that adoption of this standard would better align management's and the auditor's understanding of what is considered material for purposes of an audit of ICFR and what is considered a material weakness and the attendant disclosures with respect thereto as a consequence of such determination. We also believe that conforming the materiality standards in this way would result in less tension between management and the auditor and ultimately reduce the amount of work and costs associated with the audit of ICFR.

Alternatively, if the SEC elects to retain the materiality standard set forth in the Proposed Standard, we recommend that the language be modified to make clear that account-balance materiality should be relevant in scoping audits of ICFR only when the account-balance itself is presumptively material to the financial statements taken as a whole. This is necessary, we believe, because AU sec. 312 contains numerous references to the relevance of account-balance materiality in audits of financial statements. We

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[7] *See* Interpretive Release: Management's Discussion and Analysis of Financial Condition and Results of Operations, Rel. No. 33-6835 (May 18, 1989) ("*1989 Release*"). *See also* Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Rel. No. 33-8350 (Dec. 19, 2003).

[8] *Basic Inc. v. Levinson* 485 U.S. 224 (1988).

believe that account-balance materiality should only be relevant in scoping the audit of ICFR in limited circumstances. Just as the audit of the financial statements is designed to permit the auditors to express an opinion on the financial statements taken as a whole, the audit of ICFR is designed to result in an opinion on the overall effectiveness of the company's controls. To further auditors' ability to exercise their reasoned judgment in a risk-based, top-down audit, we recommend that the Proposed Standard be clarified to expressly limit the circumstances when account-balance materiality would be relevant.

C. Provide More Guidance on Ability to Use Work of Others

The Second Notice asks whether the Proposed Standard is sufficiently clear about the extent to which auditors can use the work of others. The Proposed Standard gives auditors greater discretion to use the work of others than does the current auditing standard, in that it explicitly permits auditors to use work performed by, or receive direct assistance from, internal auditors, other company personnel, and third parties. The Proposed Standard provides a principles-based approach for auditors to use in making judgments about whether to use the work of others, directing auditors to consider the competence and objectivity of the individuals whose work the auditor intends to use, as well as the risk associated with the control being tested. While the guidance in the Proposed Standard is an improvement over the current auditing standard, which unduly restricts the auditor's ability to use work of others, OFII believes the Proposed Standard could be improved by adding further guidance.

First, OFII recommends that the Proposed Standard include guidance that permits auditors to consider any unique circumstances of the company that may be applicable to the auditor's judgment about whether, and to what extent, the auditor may rely on the work of others. Such circumstances may be caused by external factors, such as the company's jurisdiction of organization. For example, companies in Germany generally have a dual-board structure under which internal auditors report to the management board, not the audit committee, which is a sub-committee of the supervisory board. Since the supervisory board is legally prohibited from actively participating in the day-to-day management of the affairs of the company, which is the legal province of the management board, it would not be possible for the internal auditors to be under the direct dominion and control of the audit committee. However, this "fact of life" in German companies should not render the work of internal auditors as tainted or unreliable. To the contrary, such work is of significant value and would avoid unnecessary duplication in most circumstances (other than perhaps the highest risk areas, which would be looked at by the auditor independently in any event) and should thus be reviewed by the auditor in considering whether the auditor may reasonably rely on such work for most control assessments in the same manner as if the internal auditors reported directly to the audit committee.

In this regard, the Proposed Standard could be improved by adding more specific guidance about factors to be considered in determining the extent of objectivity of company employees. The SEC's recent interpretive guidance includes helpful guidance

on such factors, stating that company employees "… will have varying degrees of objectivity based on, among other things, their job function, their relationship to the control being evaluated, and their level of authority and responsibility within the organization."[9] Similar guidance should be included in the Proposed Standard.

D. Allow Greater Discretion to Rely on Entity-Level Controls

Unlike the current auditing standard, the Proposed Standard explicitly authorizes auditors to modify the level of testing they perform on lower-level (transaction-level) controls based on their evaluation of entity-level controls. The Proposed Standard describes three different categories of entity-level controls and notes how the auditor's evaluation of each type of entity-level controls can affect the level of testing that is required of lower-level controls. While this new guidance should help auditors reduce the number of lower-level controls required to be tested in some cases, OFII believes it does not go far enough.

OFII believes the Proposed Standard should include stronger language permitting auditors to reduce testing of lower-level (transaction-level) controls where either the auditor's testing of entity-level controls does not give the auditor reason to question the efficacy of the entity-level controls, or the entity-level controls adequately address the particular financial reporting risk. Given the ultimate goal of ensuring accurate financial statements, OFII believes auditors should be given clearer, more definitive discretion to rely on their testing of entity-level controls, including, for example, controls to monitor other controls and controls over the period-end financial reporting process. The SEC's recent interpretive guidance to management includes clear, strong language on this point that could easily be incorporated into the Proposed Standard: "…. if management determines that a risk of a material misstatement is adequately addressed by an entity-level control, no further evaluation of other controls is needed."[10] Further, the SEC's interpretive guidance provides a specific example of a financial reporting risk - the misstatement of interest expense - that might be adequately addressed by an entity-level control such that no testing of transaction-level controls is necessary.[11] The Proposed Standard would be improved by adding the same kind of guidance.

OFII respectfully submits that the wording in the Proposed Standard skews the balance between testing of transaction-level and entity-level controls too heavily toward transaction-level

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[9] Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Rel. No. 33-8810 (Jun. 20, 2007) ("*Interpretive Release*"), at 22 (n. 40). The Interpretive Release also includes stronger language than does the Proposed Standard regarding the presumption that internal auditors are objective: "Personnel whose core function involves permanently serving as a testing or compliance authority at the company, such as internal auditors, normally are expected to be the most objective." *Id.*

[10] Interpretive Release at 12.

[11] Interpretive Release at 16.

controls, and that auditors concerned with their liability exposure will decide, out of an abundance of caution, that they must test an unreasonably large number of transaction-level controls. Therefore, we strongly encourage the SEC to modify the language in the Proposed Standard to emphasize to an even greater extent testing of entity-level controls.

E. Exclude U.S. GAAP Reconciliation From Section 404 Processes

OFII urges the SEC and the PCAOB to exempt the required reconciliation to U.S. GAAP from the scope of their respective rules and standards under Section 404.[12] The SEC should make special accommodations for foreign private issuers in this area, for a number of reasons. First, the U.S. GAAP reconciliation exercise is often not integrated with the financial reporting system on which the primary financial statements rely. This presents special problems and complications for the audit of ICFR. Foreign private issuers, unlike domestic issuers, are doubly burdened by the ICFR reporting and auditing requirements, because they must apply such processes to not only their primary financial statements, but also the U.S. GAAP reconciliation. Second, we believe it is appropriate to exempt the U.S. GAAP reconciliation from the scope of the Section 404 rules in light of the progress being made by the FASB and IASB toward convergence of accounting standards, which has the effect of making less relevant the U.S. GAAP reconciliation. Third, it is appropriate to exempt the reconciliation from the Section 404 rules in light of the SEC's recent proposal to eliminate the U.S. GAAP reconciliation requirement, which we believe signals, in part, a recognition of the decreasing usefulness of the reconciliation.

At a minimum, if the U.S. GAAP reconciliation remains subject to the Section 404 rules, we urge the SEC to restore language that had been included in the SEC's proposed interpretive guidance indicating that the primary focus of the Section 404 rules should be on the primary financial statements, and that the U.S. GAAP reconciliation should be excluded from the definition of "primary financial statements."

Other Observations

In addition to the matters noted above, OFII believes there are other steps that should be taken to further enhance the competitiveness of the U.S. capital markets so as to attract and retain foreign companies as long-term participants in U.S. markets. Many of these steps are described in various reports that have been published in the past year on this subject, including the Interim Report of the Committee on Capital Markets Regulation[13], the Report and Recommendations of the Commission on the Regulation of

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[12] OFII acknowledges that the SEC considered, and did not accept, comments asking that the U.S. GAAP reconciliation be excluded from management's assessment of ICFR. *See* Interpretive Release at 76.

[13] Committee on Capital Markets Regulation, Interim Report (Nov. 30, 2006).

U.S. Capital Markets in the 21st Century[14], and the Bloomberg/Schumer report.[15] OFII particularly endorses the following measures:

- Congress and/or the SEC (and/or other applicable regulators) should give strong consideration to actions that would mitigate the potential liability of auditors, whether through statutory caps on liability or safe harbors (a good faith, reasonableness standard) or other means, so that auditors will be better motivated to rationalize the scope of work necessary in connection with the audit of ICFR, including, specifically, reducing the number of controls to be tested; and

- the SEC and/or the PCAOB should work with other national and international standard-setting bodies to harmonize auditing standards across borders, with the ultimate goal of promulgating a single set of global auditing standards.

Conclusion

In our view, the excessive costs of compliance with the SEC's internal control reporting rules represent one of the chief obstacles to foreign companies choosing to list their securities in the United States. Foreign companies have a wide array of choices in capital markets and, therefore, regulatory burdens and compliance costs weigh heavily in determining where such companies pursue listings. It is imperative that the internal control reporting requirements be rationalized so that the benefits are commensurate with the costs. We urge the SEC and the PCAOB to give full consideration to all comments received and act expeditiously in adopting improved standards.

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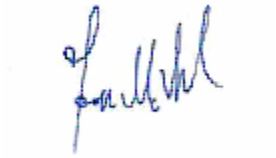
[14] Commission on the Regulation of U.S. Capital Markets in the 21st Century, Report and Recommendations (Mar. 2007).

[15] Sustaining New York's and the US' Global Financial Services Leadership (released Jan. 23, 2007).

We would be pleased to answer any questions you might have regarding our comments.

Respectfully submitted,



Todd M. Malan
President and Chief Executive Officer

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